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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ABANTE ROOTER AND)	Case No.
PLUMBING, INC., individually and on)	
behalf of all others similarly situated,	)	<u>CLASS ACTION</u>
)	
Plaintiff,	)	COMPLAINT FOR VIOLATIONS
	)	OF:
vs.)	
	)	1. NEGLIGENT VIOLATIONS
BF ADVANCE LLC, and DOES 1	)	OF THE TELEPHONE
through 10, inclusive, and each of them,	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(b)]
	)	2. WILLFUL VIOLATIONS
Defendant.	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(b)]
)	
	)	<u>DEMAND FOR JURY TRIAL</u>

Plaintiff ABANTE ROOTER AND PLUMBING, INC. ("Plaintiff"), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others

1 similarly situated seeking damages and any other available legal or equitable
2 remedies resulting from the illegal actions of BF ADVANCE LLC (“Defendant”),
3 in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s
4 cellular telephone in violation of the Telephone Consumer Protection Act, 47.
5 *U.S.C. § 227 et seq.* (“TCPA”) and related regulations, thereby invading Plaintiff’s
6 privacy and causing it to incur unnecessary and unwanted expenses.

7 **JURISDICTION & VENUE**

8 2. Jurisdiction is proper under 28 *U.S.C. § 1332(d)(2)* because Plaintiff,
9 a resident of California, seeks relief on behalf of a Class, which will result in at
10 least one class member belonging to a different state than that of Defendant, a
11 limited liability company of New York State. Plaintiff also seeks up to \$1,500.00
12 in damages for each call in violation of the TCPA, which, when aggregated among
13 a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal
14 court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold
15 under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court
16 has jurisdiction.

17 3. Venue is proper in the United States District Court for the Northern
18 District of California pursuant to 28 *U.S.C. § 1391(b)(2)* because Defendant does
19 business within the State of California and Plaintiff resides within this district.

20 **PARTIES**

21 4. Plaintiff, ABANTE ROOTER AND PLUMBING, INC. (“Plaintiff”),
22 is a natural person residing in Alameda, California and is a “person” as defined by
23 47 *U.S.C. § 153 (39)*.

24 5. Defendant, BF ADVANCE LLC (“Defendant”), is a business
25 financing company, and is a “person” as defined by 47 *U.S.C. § 153 (39)*.

26 6. The above named Defendant, and its subsidiaries and agents, are
27 collectively referred to as “Defendants.” The true names and capacities of the
28 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are

1 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
2 names. Each of the Defendants designated herein as a DOE is legally responsible
3 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
4 Complaint to reflect the true names and capacities of the DOE Defendants when
5 such identities become known.

6 7. Plaintiff is informed and believes that at all relevant times, each and
7 every Defendant was acting as an agent and/or employee of each of the other
8 Defendants and was acting within the course and scope of said agency and/or
9 employment with the full knowledge and consent of each of the other Defendants.
10 Plaintiff is informed and believes that each of the acts and/or omissions complained
11 of herein was made known to, and ratified by, each of the other Defendants.

12 **FACTUAL ALLEGATIONS**

13 8. Beginning in or around June of 2017, Defendant contacted Plaintiff
14 on Plaintiff's cellular telephone numbers ending in -6147 and -7200, in an attempt
15 to solicit Plaintiff to purchase Defendant's services.

16 9. Defendant used an "automatic telephone dialing system" as defined
17 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

18 10. Defendant contacted or attempted to contact Plaintiff from telephone
19 numbers confirmed to belong to Defendant, including without limitation (929) 384-
20 1009 and (646) 813-7886.

21 11. Defendant's calls constituted calls that were not for emergency
22 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

23 12. Defendant's calls were placed to telephone number assigned to a
24 cellular telephone service for which Plaintiff incurs a charge for incoming calls
25 pursuant to 47 U.S.C. § 227(b)(1).

26 13. During all relevant times, Defendant did not possess Plaintiff's "prior
27 express consent" to receive calls using an automatic telephone dialing system or an
28 artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §

1 227(b)(1)(A).

2 14. Defendant placed multiple calls soliciting its business to Plaintiff on
3 its cellular telephones ending in -6147 and -7200 beginning in or around June of
4 2017 and continued through June of 2018.

5 15. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
6 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

7 16. Plaintiff received numerous solicitation calls from Defendant within a
8 12-month period.

9 17. Upon information and belief, and based on Plaintiff's experiences of
10 being called by Defendant despite having no prior relation to Plaintiff whatsoever,
11 and at all relevant times, Defendant failed to establish and implement reasonable
12 practices and procedures to effectively prevent telephone solicitations in violation
13 of the regulations prescribed under 47 U.S.C. § 227(c)(5).

14 **CLASS ALLEGATIONS**

15 18. Plaintiff brings this action individually and on behalf of all others
16 similarly situated, as a member of the proposed class (hereinafter, "The Class"),
17 defined as follows:

18
19 All persons within the United States who received any
20 solicitation/telemarketing telephone calls from
21 Defendant to said person's cellular telephone made
22 through the use of any automatic telephone dialing
23 system or an artificial or prerecorded voice and such
24 person had not previously consented to receiving such
25 calls within the four years prior to the filing of this
26 Complaint

27 19. Plaintiff represents, and is a member of, The Class, consisting of all
28 persons within the United States who received any solicitation/telemarketing
telephone calls from Defendant to said person's cellular telephone made through
the use of any automatic telephone dialing system or an artificial or prerecorded

1 voice and such person had not previously not provided their cellular telephone
2 number to Defendant within the four years prior to the filing of this Complaint.

3 20. Defendant, its employees and agents are excluded from The Class.
4 Plaintiff does not know the number of members in The Class, but believes the
5 Class's members number in the thousands, if not more. Thus, this matter should
6 be certified as a Class Action to assist in the expeditious litigation of the matter.

7 21. The Class is so numerous that the individual joinder of all of its
8 members is impractical. While the exact number and identities of The Class
9 members are unknown to Plaintiff at this time and can only be ascertained through
10 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
11 The Class includes thousands of members. Plaintiff alleges that The Class
12 members may be ascertained by the records maintained by Defendant.

13 22. Plaintiff and members of The Class were harmed by the acts of
14 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
15 and The Class members via their cellular telephones thereby causing Plaintiff and
16 The Class members to incur certain charges or reduced telephone time for which
17 Plaintiff and The Class members had previously paid by having to retrieve or
18 administer messages left by Defendant during those illegal calls, and invading the
19 privacy of said Plaintiff and The Class members.

20 23. Common questions of fact and law exist as to all members of The
21 Class which predominate over any questions affecting only individual members of
22 The Class. These common legal and factual questions, which do not vary between
23 Class members, and which may be determined without reference to the individual
24 circumstances of any Class members, include, but are not limited to, the following:

- 25 a. Whether, within the four years prior to the filing of this
26 Complaint, Defendant made any telemarketing/solicitation call
27 (other than a call made for emergency purposes or made with
28 the prior express consent of the called party) to a Class member

1 using any automatic telephone dialing system or any artificial
2 or prerecorded voice to any telephone number assigned to a
3 cellular telephone service;

4 b. Whether Plaintiff and The Class members were damaged
5 thereby, and the extent of damages for such violation; and

6 c. Whether Defendant should be enjoined from engaging in such
7 conduct in the future.

8 24. As a person that received numerous telemarketing/solicitation calls
9 from Defendant using an automatic telephone dialing system or an artificial or
10 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
11 claims that are typical of The Class.

12 25. Plaintiff will fairly and adequately protect the interests of the members
13 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
14 class actions.

15 26. A class action is superior to other available methods of fair and
16 efficient adjudication of this controversy, since individual litigation of the claims
17 of all Class members is impracticable. Even if every Class's member could afford
18 individual litigation, the court system could not. It would be unduly burdensome
19 to the courts in which individual litigation of numerous issues would proceed.
20 Individualized litigation would also present the potential for varying, inconsistent,
21 or contradictory judgments and would magnify the delay and expense to all parties
22 and to the court system resulting from multiple trials of the same complex factual
23 issues. By contrast, the conduct of this action as a class action presents fewer
24 management difficulties, conserves the resources of the parties and of the court
25 system, and protects the rights of each Class member.

26 27. The prosecution of separate actions by individual Class members
27 would create a risk of adjudications with respect to them that would, as a practical
28 matter, be dispositive of the interests of the other Class members not parties to such

1 adjudications or that would substantially impair or impede the ability of such non-
2 party Class members to protect their interests.

3 28. Defendant has acted or refused to act in respects generally applicable
4 to The Class, thereby making appropriate final and injunctive relief with regard to
5 the members of the Classes as a whole.

6 **FIRST CAUSE OF ACTION**

7 **Negligent Violations of the Telephone Consumer Protection Act**

8 **47 U.S.C. §227(b).**

9 **On Behalf of The Class**

10 29. Plaintiff repeats and incorporates by reference into this cause of action
11 the allegations set forth above at Paragraphs 1-28.

12 30. The foregoing acts and omissions of Defendant constitute numerous
13 and multiple negligent violations of the TCPA, including but not limited to each
14 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
15 *47 U.S.C. § 227 (b)(1)(A)*.

16 31. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,
17 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
18 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

19 32. Plaintiff and The Class members are also entitled to and seek
20 injunctive relief prohibiting such conduct in the future.

21 **SECOND CAUSE OF ACTION**

22 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
23 **Act**

24 **47 U.S.C. §227(b)**

25 **On Behalf of The Class**

26 33. Plaintiff repeats and incorporates by reference into this cause of action
27 the allegations set forth above at Paragraphs 1-28.

28 34. The foregoing acts and omissions of Defendant constitute numerous

1 and multiple knowing and/or willful violations of the TCPA, including but not
2 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
3 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

4 35. As a result of Defendant's knowing and/or willful violations of *47*
5 *U.S.C. § 227(b)*, Plaintiff and The Class members are entitled an award of
6 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*
7 *§ 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

8 36. Plaintiff and the Class members are also entitled to and seek injunctive
9 relief prohibiting such conduct in the future.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

12
13 **FIRST CAUSE OF ACTION**

14 **Negligent Violations of the Telephone Consumer Protection Act**

15 **47 U.S.C. §227(b)**

- 16 • As a result of Defendant's negligent violations of *47 U.S.C.*
17 *§227(b)(1)*, Plaintiff and The Class members are entitled to and
18 request \$500 in statutory damages, for each and every violation,
19 pursuant to *47 U.S.C. 227(b)(3)(B)*.
20 • Any and all other relief that the Court deems just and proper.

21
22 **SECOND CAUSE OF ACTION**

23 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
24 **Act**

25 **47 U.S.C. §227(b)**

- 26 • As a result of Defendant's willful and/or knowing violations of *47*
27 *U.S.C. §227(b)(1)*, Plaintiff and The Class members are entitled to
28 and request treble damages, as provided by statute, up to \$1,500, for

1 each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47
2 U.S.C. §227(b)(3)(C).

- 3 • Any and all other relief that the Court deems just and proper.
4

5 **JURY DEMAND**

6 37. Pursuant to the Seventh Amendment to the Constitution of the United
7 States of America, Plaintiff is entitled to, and demands, a trial by jury.
8

9
10 Respectfully Submitted this 1st Day of October, 2018.

11 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

12 By: /s/ Todd M. Friedman
13 Todd M. Friedman
14 Law Offices of Todd M. Friedman
15 Attorney for Plaintiff
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